

IP 05-0735-C T/K Baude v Heath
Judge John D. Tinder

Signed on 08/29/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PATRICK L. BAUDE,)	
LARRY J. BUCKEL,)	
KITTY BUCKEL,)	
J. ALAN WEBBER,)	
JAN WEBBER,)	
WHITE OWL WINERY, INC.,)	
CHATEAU GRAND TRAVERSE, LTD.,)	
)	
Plaintiffs,)	
vs.)	NO. 1:05-cv-00735-JDT-TAB
)	
DAVID L. HEATH,)	
)	
Defendant.)	

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WHITE OWL WINERY, Inc., and)	1:05-cv-0735-JDT-TAB
CHATEAU GRAND TRAVERSE, LTD.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
)	
DAVID L. HEATH, in his official capacity as)	
Chairman of the Indiana Alcohol and)	
Tobacco Commission,)	
)	
Defendant.)	

**ENTRY ON WINE AND SPIRITS WHOLESALERS OF INDIANA'S MOTION TO
INTERVENE (Docket No. 20)¹**

Plaintiffs bring a civil rights action pursuant to 42 U.S.C. § 1983 challenging the constitutionality of Indiana Code § 7.1-5-11-1.5 and related laws (the “wine distribution laws”) against Defendant, acting in his official capacity for the State of Indiana. This matter comes before the court upon the motion of Wine and Spirits Wholesalers of Indiana (the “Trade Association”) to intervene (Docket No. 20) as a party defendant.

¹ This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

After carefully reviewing the parties' briefs and supporting materials, the court finds as follows:

I. BACKGROUND

Plaintiffs allege that under Indiana state law, an in-state winery who obtains a farm winery permit from Defendant may sell and deliver its wine directly to consumers, at the winery premises, and at a second location, in unlimited quantities, without going through a separate wholesaler and retailer. Likewise, Plaintiffs allege that under Indiana law, an in-state winery who obtains a farm winery permit from Defendant may sell, deliver, and ship its wine directly to licensed retail wine sellers, for resale to consumers, without going through a separate wholesaler. Defendant will issue a farm winery license only to wineries located within the State of Indiana that are making wine from Indiana fruit, and only to persons who are Indiana residents.

In light of the recent Supreme Court decision in *Granholm v. Heald*, — U.S. —, 125 S. Ct. 1885 (2005), Plaintiffs believe that Indiana's laws prohibiting out-of-state wineries from selling and shipping wine directly to consumers and licensed retail wine sellers violate the Commerce Clause of the Constitution. Accordingly, Plaintiffs ask this court to rule on the constitutionality of such laws and, if appropriate, grant an injunction barring enforcement of such laws and requiring Defendant to issue winery licenses without regard to residence.

The Trade Association is an unincorporated association composed of members holding Indiana wine and liquor wholesalers' permits issued by Defendant, authorizing the members to purchase, import, export, and transport wine, and to sell that wine to

Indiana retailers, dealers, other wholesalers, and individual resident consumers. The Trade Association alleges an interest in this case and seeks to intervene by right pursuant to Fed. R. Civ. P. 24(a), or alternatively, seeks to intervene by permission of the court pursuant to Fed. R. Civ. P. 24(b).

II. DISCUSSION

A. Rule 24(a) - Intervention as a Matter of Right

An applicant for intervention as of right pursuant to Rule 24(a)(2) must satisfy four requirements:

(1) the application must be timely; (2) the applicant must claim an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) existing parties must not be adequate representatives of the applicant's interest.

Heartwood, Inc. v. U.S. Forest Serv., 316 F.3d 694, 700 (7th Cir. 2003) (citation omitted).

Failure to satisfy any one of the four requirements is sufficient grounds to deny the intervention. *U.S. v. BDO Seidman*, 337 F.3d 802, 808 (7th Cir. 2003). Plaintiffs challenge the Trade Association's right to intervene on two grounds: 1) whether the Trade Association has a legally-protected interest in the litigation; and 2) whether that interest is adequately represented by Defendant. Because the court finds that

Defendant adequately represents the Trade Association's interest, it is unnecessary to reach a decision on whether its interest is sufficient for Rule 24(a) purposes.²

A proposed intervenor must show that his interests are not adequately represented by an existing party. Fed. R. Civ. P. 24(a)(2). Generally, the proposed intervenor's burden is minimal, and need only show that existing representation may be inadequate to protect the intervenor's interests. See *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). However, the Seventh Circuit applies a more demanding burden on the intervenor when the party already representing the intervenor's interest is the government. See *Solid Waste Agency of N. Cook Co. v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 508-09 (7th Cir. 1996); *Am. Nat'l Bank & Trust Co. of Chicago v. City of Chicago*, 865 F.2d 144, 148 (7th Cir. 1989) (denying intervention because intervenor failed "to make any concrete showing of inadequacy of representation" by the city's legal counsel); *Keith v. Daley*, 764 F.2d 1265, 1270 (7th Cir. 1985) (In a case where the Illinois Attorney General was defending the constitutionality of Illinois's abortion laws, the court denied intervention by a pro-life coalition and stated that "[a]dequacy can be presumed when the party on whose behalf the applicant seeks intervention is a governmental body or officer charged by law with representing the interests of the proposed intervenor."). *Solid Waste* involved an action brought by a joint venture known as Solid Waste Agency of Northern Cook County ("SWANCC") against the United States Army Corps of Engineers. SWANCC applied for a section

² Although, if the statutory scheme is question is unconstitutional, it is doubtful that the Trade Association would actually have a legitimate interest in protecting the existence of such regulations.

404 permit to build a landfill. The Army Corps of Engineers denied the permit request. SWANCC filed suit to undo the denial. A group of residents who lived near the proposed site and who were adamantly opposed to the proposed landfill sought to intervene in the action. The Seventh Circuit ruled that the intervenors had no Rule 24(a) right to intervene in the action because their interests were adequately represented by the Department of Justice, defending the Corps's permit decision. In such cases where the government is defending its actions or laws, the "private parties should not be allowed to hijack, via intervention, a government suit," unless the intervenor can show that the government is failing to adequately represent its interests. *Id.* at 509.

Solid Waste set the standard for adequate representation in such cases: "Where the interests of the original party and of the intervenor are identical—where in other words there is no conflict of interest—adequacy of representation is presumed." *Id.* at 508. In *Solid Waste*, the interest of the parties were determined to be the objectives of the parties. Thus, "the interest of the Corps of Engineers and of the would-be intervenors in this litigation instituted by SWANCC is the same: to defeat SWANCC's effort to invalidate the denial of the permit." *Id.* Applying the *Solid Waste* terminology to the present case, the interest of Defendant and of the Trade Association is likewise the same: to defeat Plaintiffs' effort to invalidate Indiana's wine distribution laws. The Trade Association argues that its interests "are not identical" to Defendant's. It may prove to be true that the motivating force driving the Trade Association, to protect the economic value of its members' distribution agreements they hold under the current wine

distribution scheme, differs from that driving Defendant, to protect the ability to regulate alcohol distribution within Indiana's borders. But, under *Solid Waste*, their underlying interest in this case is identical: to defend the validity of the current wine distribution laws that are under attack.

Because the interest is identical, the Trade Association must show that Defendant is failing to adequately defend the validity of the wine distribution laws at issue. The Trade Association has made no such showing. Apparently, it is more concerned with the possibility that Defendant "may not adequately represent[]" its interest at some future point in this litigation. Like the *Solid Waste* court, this court is "sympathetic to the aspiring intervenors' concern that at some future point in this litigation the government's representation of their interest may turn inadequate yet it would be too late to do anything about it." *Solid Waste*, 101 F.3d at 508. While the court finds that the Trade Association has no right to intervene as a party to the case, it is willing to grant the Trade Association two means by which it may ensure that Defendant continues to adequately defend the validity of the wine distribution laws. First, the court can consider granting the Trade Association leave to participate as amicus curiae to file appropriate briefs on any dispositive issues which may subsequently arise in the case. The pleadings and motions filed by the parties are matters of public record and the Trade Association is entitled to monitor and review all such filings.³ With the ability to request leave to file amicus curiae briefs, the Trade

³ The filings entered in this case are made available to the public on the court's website through the CM/ECF system at www.insd.uscourts.gov.

Association will be in a position to inform the court of factual or legal considerations that it deems are important to the defense of this case.

Second, this court will follow the advice of the Seventh Circuit, which stated that “the proper way to handle [the possibility of future inadequate representation] is for the would-be intervenor, when as here no present inadequacy of representation can be shown, to file at the outset of the case a standby or conditional application for leave to intervene and ask the district court to defer consideration of the question of adequacy of representation until the applicant is prepared to demonstrate inadequacy.” *Solid Waste*, 101 F.3d at 509. The circumstances here suggest the same advice. The Trade Association is unable to demonstrate the inadequacy of representation provided by the Defendant, but indicates concern that its interests may not be fully defended by the government at some later point in the case. For this reason, the court DENIES the present motion to intervene, subject to reopening the decision should the circumstances change in a way that threatens the Trade Association’s interests.⁴

B. Rule 24(b) - Permissive Intervention

Having found that the Trade Association has no right to intervene under Rule 24(a), the court now briefly considers whether to grant permissive intervention under

⁴ While the court reserves for future consideration these two remedies to ensure adequate defense of the validity of the state wine distribution statutes, it must stress that the Trade Association has not succeeded in intervening and is not a party to the case. Indeed, the Trade Association will not be entitled to the same rights enjoyed by a party and will not be permitted to participate in any hearings, settlement conferences, or the trial of this case.

Rule 24(b). Permissive intervention is within the court's discretion if the "applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b)(2); *Solid Waste Agency of N. Cook Co. v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 509 (7th Cir. 1996). The Trade Association contends that the state wine distribution laws are constitutional, the very legal question that Plaintiffs challenge. Thus, the Trade Association has a question of law sufficiently in common with the main action. Once the intervenor satisfies this requirement, the court has broad discretion to "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed. R. Civ. P. 24(b); *Griffith v. Univ. Hosp. L.L.C.*, 249 F.3d 658, 662 (7th Cir. 2001). Among the factors to be considered would be "the impact of the intervention on [those] rights." *Sec. Ins. Co. v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). In the present case, the court faces a relatively direct question of law: whether the Indiana wine distribution statutes are constitutional. A similar question has recently been addressed by the Supreme Court in *Granholm v. Heald*, — U.S. —, 125 S. Ct. 1885 (2005) (finding that aspects of Michigan's and New York's wine distribution laws violated the Commerce Clause), in which the Court has provided this court with helpful guidance in addressing the validity of Indiana's laws. In addition, this court has some experience in considering constitutional challenges, including those that involve the Commerce Clause. See, e.g., *Gov't Suppliers Consol. Servs., Inc. v. Bayh*, 753 F. Supp. 739 (S.D. Ind. 1990) (ruling that Indiana statute requiring disproportionate fees for out-of-state waste and certification procedures for bringing waste to in-state disposal sites violated the Commerce Clause). Likewise, the staff of the Office of the Indiana Attorney General has proven to be experienced and adequate to defend the

constitutionality of state laws and regulations. Due to the legal guidance provided by the Supreme Court and the Attorney General's vigorous advocacy, the addition of another party-defendant will provide little, if any, benefit in resolving the issues presented in this case. Indeed, such addition would almost certainly add much delay and perhaps cloud the legal question at issue here. Accordingly, the court declines to exercise its discretion in favor of allowing the Trade Association's intervention.

III. CONCLUSION

For the foregoing reasons, the Trade Association's Motion to Intervene (Docket No. 20) is **DENIED**, subject to reopening the decision should the circumstances change in a way that threatens the Trade Association's interests.

ALL OF WHICH IS ENTERED this 29th day of November 2005.

John Daniel Tinder, Judge
United States District Court

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